

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

AMERICAN LLC
Plaintiff Below,
Appellee

VS

MS.DENIECE LANE
Defendant Below,
Appellant

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C.A. No. JP13-18-002019

TRIAL DE NOVO

Submitted: May 21, 2018

Decided: June 20, 2018

APPEARANCES:

American LLC, Plaintiff appeared by and through John R. Weaver, Esq.

Deniece Lane, Defendant appeared by and through Jilliam M. Pratt, Esq.

Sean P. McCormick, Deputy Chief Magistrate

Beatrice A. Freel, Justice of the Peace

James R. Hanby, Sr., Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CIVIL ACTION NO: JP13-18-002019

AMERICAN LLC VS DENIECE LANE

ORDER ON TRIAL DE NOVO

A trial de novo panel was convened consisting of Hon. Sean McCormick, Hon. Bea Freel, and Hon. James R. Hanby, Sr. The plaintiff was represented by John R. Weaver, Esq. and the defendant was represented by Jillian M. Pratt, Esq. All parties were present and trial was held.

History

This matter was argued in the court previously before Hon. Emily A. Ferrell who entered judgment for the plaintiff in the amount of \$274.50 on April 12, 2018. On April 17, 2018, Ms. Pratt filed an appeal on behalf of the defendant which brings us to a trial today before a de novo panel.

Issues

Plaintiff is seeking back rent from part of February, all of March, April, and 21 days of May. In addition, plaintiff is seeking late fees of \$25 a month and possession of the unit.

Defendant denies plaintiffs claim and asserts a counter claim based on lack of full use and enjoyment of the unit in question. As such, she is seeking a rental abatement of 2/3 of any rent that might be due for the period in question.

Testimony

Mr. Headen, property manager for the plaintiff, testified that defendant rented the unit at 1406 W. 4th Street Apt A with a lease dated January 1, 2018. He testified that the rent was due on the 1st and late after the 5th of the month and that the lease required a \$25 late fee. The defendant failed to pay the full February rent and a five-day letter was sent to the defendant on February 7, 2018.

He agreed that there were some issues with the heat in the unit and that a credit had been given of \$131.00 from the owner. In addition, the owner allowed the defendant to keep \$100.00 of the security deposit to purchase cleaning supplies to use in the unit. The total on the breakdown sheet shows the plaintiff seeking \$1684.37 which includes \$519.00 for February, \$650.00 for April, rent for May to date, and late fees of \$75.00.

Ms. Lane, the defendant, took the stand and testified that she moved into the unit December 29, 2017 and that there were issues immediately including roaches in the refrigerator, all over the kitchen and the mailbox in disrepair. On December 30, 2017, it became apparent to her that that heat was not working in the unit. She sent a text on January 1, 2018. Heat was finally fixed January 8, 2018. The mailbox was fixed February 1, 2018 when

she purchased a mailbox on her own. She also purchased her own products to attempt to kill the roaches. She also experienced an ongoing issue with mice that only got worse when the upstairs tenant moved out.

She testified that around January 8, 2018 there was an issue with the kitchen sink which allowed water to leak in to the basement, this was not fixed until February 28, 2018. Her son also found two bed bugs during this time period.

She delayed moving many of her items out of storage due to the issues at the unit which costed her an additional \$244.20 for storage fees.

There were numerous issues with the doors and some of the windows were nailed shut. She advised that she had placed the rent in full in escrow during the time in question and could pay it but had wanted the issues fixed.

On cross, the defendant agreed that the property manager had the locks changed five times but that it never was the lock that was the whole problem but rather how the door itself was held in place improperly which was never fixed.

Mr. Swanson, a repairman for the plaintiff, was called and testified that he had sprayed two times for roaches before the defendant moved in and had also sprayed twice after she moved in. He testified that he had filled in some holes and placed out bait to try and resolve the mouse problem.

Decision of the panel

After hearing the testimony offered as well as viewing the evidence presented in this case, the panel enters its decision as follows:


First on the case in chief, the panel finds that the plaintiff is entitled to the rent sought. However, the Court finds that as the plaintiff failed to comply with the provisions of the landlord tenant code the plaintiff is not entitled to the late fees. For simplicity the panel awards rent through the end of May or a total of \$1819.00, this consists of \$519.00 for February, \$650.00 for April, and \$650.00 for May.


On the counter claim the panel finds the following, the credits of \$100.00 off the security deposit and \$131.00 off the February rent have fully reimbursed the defendant for costs she incurred for insect killer and cleaning supplies. On the larger issue of rent abatement, the panel had to decide if Ms. Lane had been deprived of a substantial part of the benefit or enjoyment of the bargain. To this question the panel holds decidedly so, both because of the conditions of the unit and issues with the front door which have caused Ms. Lane continued concern for the safety of her family and the security of her possessions.

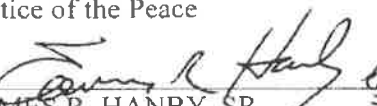
As to whether a good faith dispute exists, the plaintiff claims no because the tenant failed to properly escrow funds as defined by 25 Del. Code § 5716. However, as no evidence was presented that Ms. Lane was ever provided with a summary of the landlord-tenant code, as required by 25 Del. Code § 5118, thereby freeing Ms. Lane from such particular notice provisions.

Therefore, based on all of the foregoing the panel awards the defendant Ms. Lane an abatement of 20% for four months February-May totaling \$520.00. Net judgment is entered for the plaintiff in the amount of \$1299.00, plus court costs, and post judgment interest. Provided the amount is paid within 10 days to the plaintiff, this matter shall be considered a good faith dispute and possession of the rental unit in question shall remain with Ms. Lane, with rent in full of \$650.00 per month commencing effective June 1, 2018. If the judgment amount is not paid within 10 days, the plaintiff is entitled to possession without further court action.

IT IS SO ORDERED 20th day of June, 2018


(for) SEAN P. MCCORMICK
Deputy Chief Magistrate


(for) BEATRICE A. FREEL
Justice of the Peace


JAMES R. HANBY, SR.
Justice of the Peace



Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).